

Alabama Sentencing Commission

Minutes of Commission Meeting December 16, 2005

The Alabama Sentencing Commission met in the Mezzanine Classroom of the Judicial Building in Montgomery on Friday, December 16, 2005. Present at the meeting were:

Hon. Joseph Colquitt, Chairman, Retired Circuit Judge, Professor, University of Alabama School of Law, Tuscaloosa
Ellen Brooks, District Attorney, 15th Judicial Circuit, Montgomery
Rosa Davis, Chief Assistant Attorney General, Montgomery
Steve Glassroth, Esquire, The Glassroth Law Firm, Montgomery
Rhonda Hardegree, Victim's Advocate, Lincoln
Lou Harris, D.P.A., Faulkner University, Montgomery
Joe Reed, Jr., Faulk & Reed L.L.P., Montgomery

Advisory Council:

Joe Mahoney, Director, Mobile County Community Corrections
Adolph South, Tuscaloosa
Walter Wood, Director of Youth Services, Mt. Meigs

Staff:

Lynda Flynt, Executive Director
Melisa Morrison, Senior Research Analyst

Others Attending:

Becki Goggins, Criminal Justice Information Center, Montgomery
Steve Hayes, Department of Corrections, Montgomery
Amanda Luckey
Rev. Earl W. Wagner

Welcome and Introductory Remarks

The meeting convened at 10:00 a.m., with Chairman Colquitt calling the meeting to order and making introductory remarks. He stated that it was a critical time of the year for the Commission, inasmuch as Commission staff had to prepare its report to the Legislature. Thus, it was noted that some of what the Commission would be hearing were items on which decisions had already been made and votes taken.

Chairman Colquitt mentioned that the federal sentencing system scheme is still up in the air, having been brought into question by several United States Supreme Court decisions this year. He reminded everyone that the Commission has proposals for voluntary sentencing criteria that are not brought into question by the United States Supreme Court

decisions on sentencing guidelines. He noted that the voluntary sentencing standards the Commission is proposing fall outside of the scope of the problems that confront the federal system and some state systems, such as the state of Washington.

Chairman Colquitt commended the staff of the Alabama Sentencing Commission for their hard work. He announced that Bennet Wright, statistician to the Commission, had been hired by the Federal Administrative Office of Courts in Washington D.C. In addition to the vacancy left by Mr. Wright, Judge Colquitt told the Commission members that the office staff is also having to do without the services of Rosa Davis, because she is working with the Judicial Inquiry Commission. While Mrs. Davis still continues to work on Sentencing Commission projects, she is not available full-time because of her new duties at the Judicial Inquiry Commission.

Update on Community Corrections Punishment Programs

Joe Mahoney, Director of Mobile County Community Corrections and President of the Alabama Association of Community Corrections, gave the Commission members an update on Alabama's Community Corrections programs and plans to expand these programs statewide, stating that the Association and the Department of Corrections are working very closely together. Mr. Mahoney noted that, with the assistance of the Alabama Sentencing Commission, a joint letter from the Alabama Association of Community Corrections and the Department of Corrections was being sent to all circuit and district judges, district attorneys, and county commission members. He explained that the purpose of this letter was twofold: 1) to announce that for FY 2006 the Department of Corrections has grant monies available for expanding existing community corrections programs and for the development of new programs in those counties where there are none existing at the present time; and 2) to explain the need for statewide expansion. There are currently only 25 programs serving 34 of Alabama's 67 counties.

Mr. Mahoney stated that the Association is also working with the Department in terms of developing standards and policies for community corrections programs. He stated that one of the strengths of community corrections is local design. The Association wants to maintain that flexibility so that each judge can tailor a sentence to meet the individual needs of that particular offender. Once the standards are approved Mr. Mahoney promised to provide Lynda Flynt with copies to distribute to Commission members at the next Sentencing Commission meeting.

Mr. Mahoney announced that the Association will hold its annual training conference in Cheaha on March 29-31, 2006. He stated that the Association was in search of agenda items and speakers, particularly from counties that right now do not have community corrections programs and counties that are interested in expanding their programs.

He advised Commission members that most of the contracts for FY 2006 for the Department of Corrections have already been met. Jefferson and Mobile counties have been using probationary type orders for community corrections. Mr. Mahoney stated that what they are going to do now, in compliance with the Department of Corrections wishes, is ensure that all the front end diversions have AIS numbers. In this regard, judges will

sentence people to the Department of Corrections for participation in a community corrections program and the offender will be supervised by the community corrections program.

Discussion on Community Corrections Update

Rosa Davis noted the recent publicity on overcrowding in county jails and the backlog of state inmates and asked what steps were being taken to look at how community corrections could provide immediate help with that problem.

Mr. Mahoney responded that the Mobile County Commission has initiated a program for people awaiting transfer to the Department who are housed in their county jail. They are getting these people transferred to the community corrections program with an amended court order before they actually get to the Department of Corrections. He noted that one problem that is reoccurring is with the transcripts from the court clerk's office. He explained that there are people in jail that have not received the transfer order from prison yet, but they are trying to expedite the process to identify these people and, if they meet the criteria, send them to community corrections before they are transferred to DOC.

Ms. Flynt noted that one of the changes DOC has initiated is an expedited process in which DOC provides lists of eligible people for institutional diversions to the community corrections programs and courts. Another change is a new temporary special incentive program which increased the amount that DOC will reimburse programs for institutional diversions. This program was begun in September.

Commissioner Campbell explained that the Department of Corrections has dedicated a full time person to review lists of offenders and determine who is eligible for diversion to community corrections. Only lists of those persons that they know are eligible for diversion are sent to the programs.

In response to a question from Mrs. Davis of whether the lists included inmates housed in county jails, Commissioner Campbell stated that they did not because the Department did not believe they had the authority to divert inmates to community correction programs from county jails. He stated that he has sent Ken Wallis a letter asking for his opinion about this.

Mrs. Davis noted that the county jails are paid a very minimum amount for inmates who have been sentenced to the state penitentiary. She asked who paid them and whether that was an expenditure that came from DOC's budget. Commissioner Campbell commented that he is told that it comes from the comptroller's office, and stated that it is \$1.75 per day for meals only.

Mrs. Davis commented that from her knowledge of how community corrections works in Alabama, an important aspect for effectiveness is that the programs are open to ideas coming from the community. She noted that's one of the reasons you want to have community corrections in the community is so the local community can assist the program in performing its functions. She mentioned that she saw a program last year while visiting Philadelphia where churches had banded together and almost serve as probation officers or case managers, assisting offenders coming out of prison and returning to the community.

Commissioner Campbell explained that the Department of Corrections was faced with the challenge from Nov. 11th until December 9th of removing 810 inmates from the county jails. Even with the increase in transfers, they were only able to decrease the number of inmates with transcripts over 30 days ready by 28.

Commissioner Campbell stated that he did not know how the Department would be able to effectively reduce the jail population through diversions to community corrections programs, if by moving 810 out in 3 weeks the Department was only able to reduce the backlog by 28. In order to that, the inmates that were going to EOS within 30 to 60 days were moved out of the secure beds into the empty work release beds. He noted that these transfers did not apply to sex offenders or those with kidnapping charges, even those whose sentence were to expire within 30 days; those were still incarcerated in maximum security beds. Commissioner Campbell noted that while community corrections is a very important component of trying to solve the overcrowding problem, with the numbers that DOC is facing, it is going to require much more.

DOC Report on Community Corrections – Jeff Williams, Director, Community Corrections Division

Mr. Williams stated that at the beginning of FY 2005, there were 23 community corrections programs in 30 counties. Over the year, the Department of Corrections reimbursed or diverted 1896 felons into existing programs. Of those, 1156 were new commitments over the year. He noted that this record was pretty consistent compared to the previous three years which have averaged out to approximately 1000 new inmates going into those programs each year.

Mr. Williams explained that leadership changes at the local level caused problems with some programs. Directors were leaving or replaced; therefore, some of the programs saw their numbers drop as far as the number of inmates diverted in FY 05.

The Commission members were told that the Legislature and administration have committed new dollars to community correction programs for FY06. Jeff Williams stated that Colbert County was brought on line and is already diverting a few inmates. He noted that contracts for the current programs have been expanded to give more opportunity for increased diversions. Recently, DOC's Community Correction Division has been in contact with a number of counties - Limestone, Madison, Butler, Lowndes, and Crenshaw. Mr. Williams stated that he hopes that all of these counties will have community corrections programs established sometime in FY06.

The Department of Corrections has begun to do everything that it can to facilitate diversions from the institutional level. A couple of things that the Department has done over the last several months have been: (1) Increase the monetary value of those diversions coming out of our facilities and (2) committed another full time person to the Community Corrections Division, whose primary responsibility will be to review institutional diversion lists and identify eligible candidates.

Ms. Flynt mentioned that Circuit Judge Jim Hill has been very interested in starting a program in St. Clair County and in her conversations with him he asked if there would be any money left for start up programs in FY06. Commissioner Campbell commented that if they submit a program then they would comment at that time if it is a viable program eligible for startup funds.

Legislative Committee Report

Dr. Lou Harris, Chair, directed the Commission's attention to the handout labeled Legislative Committee minutes. He stated that the committee is actually putting the motions on the table and Chairman Colquitt would come back to them later and the members would take a vote on them.

Dr. Harris commented that the Legislative Committee is a very well informed, dedicated, and hard working group. He recognized the level of professionalism of the persons serving on this committee and stated that their commitment really echoes their concern for the ongoing crisis - as noted on the front of the 2006 report; the crisis continues.

#1 Sentencing Standards bill – The bill was introduced but failed to pass during the last legislative session. The standards address sentencing disparity and overcrowding while maintaining judicial discretion. The bill proposes adoption of voluntary sentencing standards drafted by the Sentencing Commission, that have been presented statewide in 12 workshops to judges, defense lawyers, prosecutors, probation officers, and community corrections officials – (over 800 participants) – projected to halt growth in corrections when fully implemented – includes sentence recommendations for length of sentence and disposition (probation or prison) based on weighting historical sentencing factors (empirical data) – includes shorter sentence recommendations within longer statutory ranges

#2 Access to Juvenile and Youthful Offender Records - Addresses sentencing disparity by allowing consideration of all prior juvenile and youthful offender adjudications in making sentencing decisions for subsequent adult felony convictions –necessary for most effective uniform implementation of the sentencing standards. Dr. Harris stated that the concern here was that the primary players in the criminal justice system – judges, prosecutors, probation officers - have statewide access to juvenile and YO records.

#3 Pardons and Paroles Facility Fees – This bill addresses overcrowding and offender accountability by increasing the amount of wages that can be withheld from a transition center or halfway house resident for purpose of paying restitution and court costs.

The committee discussed this bill and decided that some clarification was needed on certain language.

Dr. Harris noted that in the last paragraph on Page 2 the committee wanted to change the word “may” to “shall” (subsection 3 on Page 3).

#4 Loot Rule – Amendment of Burglary 1st and 2nd Degrees

Adopts a uniform rule for burglary loot (returning to the original intent of the drafters of the criminal code – also included in the voluntary sentencing standards. This bill amends §13A-7-5 and 13A-7-6 of the Code of Alabama 1975, relating to Burglary in the 1st and 2nd degrees to require the offender to either be armed with a deadly weapon upon entry into a dwelling or building or use or threaten the immediate use of a deadly weapon in order to commit these crimes to be convicted of the higher offense. It is specifically provided that the fact that a deadly weapon or dangerous instrument is one of the items stolen in the burglary does not constitute “use” or “threaten the use” of the deadly weapon or dangerous instrument.

Dr. Harris asked Ellen Brooks to explain exactly what the committee discussed on the difference between carrying a weapon onto the premises and acquiring possession after entering the premises. Ms. Brooks explained that the only significant change the committee made was to correct a small discrepancy on Page 1 in the synopsis in reference to burglary in the 2nd degree relating to a building rather than a dwelling. She noted that there was a question raised as to whether or not it was clear that you were not excepted out if you took a weapon onto the premises, even though you may never use it or threatened to use it. The committee felt that was clear that a person was still covered if they were armed when they entered the premises. It was only when the weapon or instrument was procured solely as loot from the burglary that the defendant would not be considered armed under the burglary statutes.

#5 Criminal Information Exchange Act. The committee reviewed a memo that had been sent by a staff attorney of the Board of Pardons and Paroles in opposition to some of the provisions of the bill. Some committee members felt that data was needed regarding the bill and wanted to know how other states had dealt with the problem of exchange of information between criminal justice departments and agencies.. The committee voted to table the bill.

Ms. Flynt explained that the Commission staff was asked to draft the bill by a Technology Committee made up of staff from DOC AOC and CJIC and this bill might more appropriately be pursued by that committee or the Governor. During the meeting someone made the comment that DOC needed to be able to gather all types of criminal information from different sources. It was noted that the Sentencing Commission had a specific statute that states that other agencies, specifically Pardons & Paroles, the Department of Corrections, Criminal Justice Information Center, and AOC, would make criminal history information available for the Commission’s clearing house function. At the request of the Committee, Commission staff drafted the bill and submitted it to CJIC

and Mike Carroll. At this point, those agencies need to review the bill to see if they wish to pursue it. The bill will not be reviewed and approved in time to include in the Commission's legislative package. In addition, the district attorneys have expressed some concerns about provisions relating to their records. They want to be eliminated from the bill's provisions.

Ms. Brooks explained that there was great concern among the DAs about exactly what it was that was freely exchanged. The DAs, unlike many of these other agencies or groups, are involved in investigating matters and things that may never end up in the records of AOC. She further explained that DAs also have concerns about forensics, because there are reports and things that they do that are not public knowledge--it might be investigative. Ms. Brooks noted that the DAs are very supportive of the concept but didn't feel comfortable with endorsing the bill until they knew exactly what was being asked of them.

Ms. Flynt stated that the agencies that looked at the bill and commented expressed concern that it was so broadly written that the committee really needed to enumerate what they were going to get. Ms. Flynt further stated that you really can't enumerate every thing that they are going to get, because there are so many agencies involved. She noted that if they want to be more specific it might be easier to exclude what's not available then what would be available.

#6 Electronic PSI - Requires *either* that a pre-sentence investigation report or a post-sentence investigation report for every convicted felon. Under current law, pre-sentence investigation reports on convicted felony offenders are required only upon motion of a party or the court and these reports are provided in written or electronic form. This bill would require reports to be in electronic format. It is needed for the proper classification of convicted offenders and to maintain current data on convicted offenders on which policy decisions can be made for improving Alabama's criminal justice system.

Bill Segrest stated that there would have to be a fiscal note attached to the bill because more officers would be needed. Lynda stated that, although they had included the need for additional funding the Commission's report to the Legislator, for legislative impact purposes, costs would need to be narrowed down more, with estimates on past convictions and the number of PSI completed in the last year.

Mr. Segrest noted that there was a slight problem in the workload study. He stated that the study may not be accurate now. He further stated that an internal assessment may have to be done in order to determine how long it takes to do a PSI or they will have to contract with someone to come in and do that study again. Ms. Flynt stated that the Commission cannot wait for a study to be conducted, if it is going to introduce this bill in this Legislative session. She asked Mr. Segrest to provide a figure to include in the report, should the Commission vote to include the bill in its package.

Addressing questions regarding the E-PSI bill from Stephen Glassroth, Lynda explained that the requirement applies to all felony convictions and that either a pre-sentence OR a

post-sentence investigation report was required to be completed and filed in all instances in which the defendant was convicted. Also, the bill requires that the PSI be in electronic format. The bill does not mandate that a Pre-Sentence report must be filed for all convictions. Although judges and every body else want as much information in presentence reports in every case, they didn't want to backlog the court system. So what we provided in this bill is that there be either a presentence OR a postsentence report filed.

#7 Victim Notification – The committee does not have anything to bring to the Commission. The committee is still discussing and trying to iron out all of the details. Working with Pardon and Paroles and VOCAL, the Sentencing Commission is attempting to work out a compromise bill. Mr. Segrest expressed his appreciation to Lynda and Ellen for their work on this difficult and complicated issue.

Ms. Flynt stated that this bill is something that the Governor asked the staff of the Sentencing Commission to look into. He addressed the Sentencing Commission, stating that he would like some kind of compromise to be worked out if possible. Lynda noted that Ellen Brooks spearheaded this whole movement and is to be commended for her hard work and mediation skills. Vernon Barnett, who is the Governor's appointee to the Sentencing Commission, stated that the Governor will include this bill in his legislative package, if there is a bill that everybody agrees on. A draft copy of the bill was distributed to the Commission members for informational purposes only.

Vote on Proposed Bills

1. Sentencing Standards Bill – Unanimously approved
2. Juvenile and Youthful Offenders Records Access Bill. Unanimously approved
Passed
3. Pardons and Paroles Facility Fees – Unanimously approved
4. Burglary Loot Rule – Unanimously approved.
5. Criminal Information Exchange Act – This bill was tabled.
6. Pre sentence Post sentence Pre investigative Report – Approved as amended

Stephen Glassroth moved to amend the bill by moving the second sentence to become the first and to read as follows:

“There shall be completed a presentence or postsentence investigation report in all felony cases filed after the effective date of this amendatory act and such report shall be in an electronic format.. On motion of the court or written motion of either party, the court shall require a written report of a presentence investigation of a defendant convicted of a felony, and such defendant shall not be sentenced or otherwise disposed of before such report has been presented to and considered by the court.”

The motion was seconded and a majority of the Commission members voted to approve the amendment. Chairman Colquitt stated that the proposal was now amended and called for the Commission's vote on the bill as amended. By unanimous vote the bill was approved as amended.

7. Victim Notification Bill – The bill was tabled for additional drafting and negotiations.

Mr. Glassroth commented that for many years he has been talking about a first offender bill and it always discussed and always been a non starter. He requested that the Legislative Committee take another look at legislation that would provide for first offender treatment for defendants, regardless of age, not merely a redraft of the youthful offender statute. Chairman Colquitt referred the proposal that the Commission look at a first offender to the Legislative Committee.

Ms. Flynt commented that the Commission had one of its interns spend half of the summer on that topic. The research of other states primarily dealt with statutes such as those relating to habitual felony offenders, youthful offenders and juvenile offenders. Mr. Glassroth stated that he might canvas some other states and see what they do with similar kinds of issues.

Ms. Flynt noted that earlier the Commissioner mentioned that there were problems about diversions from the county jail. She suggested that perhaps that might be an issue the Commission could consider regarding new legislation to clarify that. Commissioner Campbell commented that legislation could provide the Department with authority in these situations.

2006 Sentencing Commission Report

Ms. Flynt distributed a draft of the Commission's report, noting it was just a draft and was not for distribution. She specifically asked for the members input on the different titles suggested.

Ellen Brooks noted that what she looks at in the title is reference to "the crisis" because that's what is in the media now. The Governor also is attuned to that fact. The title should be something like "Addressing the Crisis"--responding to it.

Lynda - Some suggested "The Crisis Continues: Charting the Course for Reform."

Chairman Colquitt – In looking at them I decided that the middle one was a little bit long. The other two one of them says that we have got a crisis. The third one says that we are charting a course for reform so I come up with just a thought why not tell them that we have a crisis and here is what we are trying to do about it.

Stephen – How about, The Crisis Continues: Addressing Reform"

Chairman Colquitt asked members to look over the report during lunch. He reminded the members that the Commission will need to take action on it today so that Lynda and staff can get it completed in time to submit to the Legislature.

Advisory Council Members (Nominations)

Chairman Colquitt noted that there are five people on the advisory council whose terms have expired. Additionally, he advised that there was another person whose term was expiring and was appointed by the Commission of Corrections. He reminded the Commission members that they could nominate anyone who would have a strong interest in criminal justice and sentencing issues. Nomination ballots were distributed, marked and taken up. Nominations will be announced and voted on at the next meeting.

A motion was made that the Commission submit the report in its final form as early as possible in the Legislative Session of 2006. The motion was seconded.

Ellen Brooks questioned why there was a section included in the report on life without parole sentences. Lynda stated that the research was in response to several newspaper articles on how many people were in the penitentiary serving life or life without parole. She stated that this issue also came up with the Kirby Cases and Kirby motions, and was a project Bennet took on. She noted that Ellen had mentioned problems with the offense listed as aggravated murder. Lynda explained that the reason “aggravated murder” is listed is because that is how DOC refers to old capital murder convictions.

Ellen stated that since the Commission has not really looked at life without parole, except when the Kirby decision came along, which did not affect very many people, she questions why all of this information is included in the Commission’s report.

Lynda stated that the Commission is a clearinghouse for criminal justice data and that was of one of the studies the Commission staff conducted. She explained that she wanted to put it in this draft because we did feel like some people may not think that it would be appropriate to include in the annual report. We wanted to have that discussion now and any motions or suggestions that anyone would like to make.

Ellen stated that she believed that the Commission should produce a report that is substantive and then has recommendations based on that substance. Since there is no recommendation that is being made, just informational concerns, I she stated she did not think it should be included in the report. In addition, she questioned the validity of the data since it referred to “aggravated murder” which is an unknown offense under our criminal code.

Ms. Brooks expressed her concern referring to Page 30, where there was a table that compared the Alabama inmates serving life or life without parole with other states. She stated that she doesn’t know if that is a fair measure, because in Alabama a lot of people were sentenced to life, because prosecutors or judges didn’t want certain people getting out too quickly. It was a response to certain people being released too quickly at one period in time. Alabama’s life statute may not compare with other states, where they

have mandatory minimums, they have to serve where that would not apply to Alabama defendants. She noted that this type of information is the kind of thing that can be shared with the Commission members to look at and see what action if any needs to be taken, but should not be included in the Commission's report to the Legislature.

Ms. Brooks moved that the Commission not include the section on life and life without parole sentences the Commission's final report to the Legislature, based on the fact that they do not appear to be complete at this time. Rosa Davis seconded the motion.

Discussion

Stephen Glassroth stated that he didn't have a problem with taking this out. He thinks that this is a topic that is worthy of examination, because it certainly impacts the Commission's mission.

Ms. Flynt stated that the data will be reexamined and provided to Commission members later for their information and input. The majority favored the motion.

Dr. Harris requested to use endnotes or footnotes for cites being used. He suggested including very specific page numbers.

Bill Segrest suggested the paragraph and chart on page 37 regarding the simulation model be placed in a more prominent spot in the report. He stated that this was one of the most important articles and charts in the entire report and should be prominently displayed. Ms. Flynt noted that last year it was also included in the executive summary.

New Business

Dr. Harris stated that the Commission serves as a body that analyzes data and proposes changes through criminal justice legislation. He said that one of the things the Commission members need to be thinking about is for the Commission to really take a hard look, and maybe getting Tammy and John to get the data that it depends on, at legislative proposals being introduced that effect the criminal justice system.

Ms. Flynt announced that the Sentencing Commission has a position open for a statistician and that the announcement was scheduled to close on January 10th. She noted that the Commission has a limited amount of time and money that it can spend on consultants. The Commission is under a small contract but it is simply for training Bennet and Melisa on the simulation model and how to update the standards. Ms. Flynt further stated that the Commission does not have the money right now to depend on Tammy and John to assist with impact statements. Unlike other states there is a Legislative Fiscal Office that does impact statements.

Ms. Flynt announced that she and Rosa are on the agenda for the Judge's conference and was also asked to address new judges. She mentioned that they are looking at the addressing the court clerks, because one of the problems that was found is data entry. Ms. Flynt stated that handouts have been drafted, when finalized they will be put it on the website. This publication provides an update on cases, specifically those dealing with the split sentence statute.

There being no further business the meeting was adjourned.